

AGREEMENT BETWEEN
THE STATES OF GUERNSEY
AND
THE GOVERNMENT OF THE ITALIAN REPUBLIC
ON THE EXCHANGE OF INFORMATION RELATING TO TAX MATTERS

Whereas the States of Guernsey and the Government of the Italian Republic (“the Parties”) wish to enhance and facilitate the exchange of information relating to taxes;

Whereas it is acknowledged that the States of Guernsey has the right under the terms of its Entrustment from the UK to negotiate, conclude, perform and subject to the terms of this Agreement terminate a tax information exchange agreement with the Government of the Italian Republic;

Now, therefore, the Parties have agreed to conclude the following agreement which contains obligations on the part of the Parties only.

Article 1

Object and Scope of the Agreement

The competent authorities of the Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment, enforcement, collection or recovery of such taxes, with respect to persons subject to such taxes, or to the investigation of tax matters or the prosecution of criminal tax matters in relation to such persons. The rights and safeguards secured to persons by the laws or administrative practice of the requested Party remain applicable to the extent that they do not unduly prevent or delay effective exchange of information.

Article 2

Jurisdiction

To enable the scope of this Agreement to be implemented, information shall be provided in accordance with this Agreement by the competent authority of the requested Party without regard to whether the person to whom the information relates is, or whether the information is held by, a resident or national of a Party. A requested Party is not obligated to provide information which is neither held by its authorities, nor in the possession of or in the control of, nor obtainable by persons who are within its territorial jurisdiction.

Article 3

Taxes Covered

1. The taxes which are the subject of this Agreement are:

a) in Italy:

- the personal income tax;
- the corporate income tax;
- the regional tax on productive activities;
- the value added tax;
- the inheritance tax;
- the gift tax;
- the substitute taxes;

b) in Guernsey:

- the income tax;
- the dwellings profits tax.

2. This Agreement shall also apply to any identical taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes. This Agreement shall also apply to any substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the Parties through their competent authorities so agree. The competent authority of each Party shall notify the other of any substantial changes to the taxation and related information gathering measures covered by the Agreement.

Article 4

Definitions

1. For the purposes of this Agreement the term:

- a) “Italy” means the Italian Republic and includes any area beyond the territorial waters which is designated as an area within which Italy, in compliance with its legislation and in conformity with the international law, may exercise sovereign rights in respect of the exploration and exploitation of the natural resources of the seabed, the subsoil and the superjacent waters;
- b) “Guernsey” means Guernsey, Alderney and Herm, including the territorial sea adjacent to those islands, in accordance with international law;
- c) “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund or scheme provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
- d) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- e) “competent authority” means:
 - (i) in the case of Italy, the Ministry of Economy and Finance;
 - (ii) in the case of Guernsey, the Director of Income Tax or his delegate;
- f) “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes;

(Article 4 contd.)

- g) “criminal tax matters” means tax matters involving intentional conduct whether before or after the entry into force of this Agreement which is liable to prosecution under the criminal laws of the requesting Party;
- h) “information” means any fact, statement, document or record in any form whatever;
- i) “information gathering measures” means laws and administrative or judicial procedures that enable a Party to obtain and provide the requested information;
- j) “person” includes a natural person, a legal person or any body or group of persons;
- k) “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
- l) “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- m) “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Parties;
- n) “requested Party” means the Party requested to provide information;
- o) “requesting Party” means the Party requesting information;
- p) “tax” means any tax to which the Agreement applies.

2. As regards the application of this Agreement at any time by a Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the laws of that Party, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that Party.

Article 5

Exchange of Information Upon Request

1. The competent authority of the requested Party shall provide upon request by the requesting Party information for the purposes referred to in Article 1. Such information shall be exchanged without regard to whether the requested Party needs such information for its own tax purposes or the conduct being investigated would constitute a crime under the laws of the requested Party if such conduct occurred in the territory of the requested Party. The competent authority of the requesting Party shall only make a request for information pursuant to this Article when it is unable to obtain the requested information by other means, except where recourse to such means would give rise to disproportionate difficulty.
2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, the requested Party shall use at its own discretion all relevant information gathering measures necessary to provide the requesting Party with the information requested, notwithstanding that the requested Party may not need such information for its own tax purposes.
3. If specifically requested by the competent authority of the requesting Party, the competent authority of the requested Party shall provide information under this Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.
4. Each Party shall ensure that its competent authority for the purposes specified in Article 1 and in accordance with Article 2 of the Agreement, has the authority to obtain and provide upon request:
 - a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;

(Article 5 contd.)

- b) (i) information regarding the legal and beneficial ownership of companies, partnerships and other persons, including ownership information on all such persons in an ownership chain;
- (ii) in the case of trusts, information on settlors, trustees, protectors and beneficiaries;
- (iii) in the case of foundations, information on founders, members of the foundation council and beneficiaries; and
- (iv) in the case of collective investment schemes, information on shares, units and other interests;

provided that this Agreement does not create an obligation on either Party to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

5. Any request for information shall be formulated with the greatest detail possible and shall specify in writing:

- a) the identity of the person under examination or investigation;
- b) the period for which the information is requested;
- c) the nature of the information requested and the form in which the requesting Party would prefer to receive it;
- d) the tax purpose for which the information is sought;

(Article 5 contd.)

- e) the reasons for believing that the information requested is foreseeably relevant to tax administration and enforcement of the requesting Party, with respect to the person identified in subparagraph (a) of this paragraph;
- f) grounds for believing that the information requested is present in the requested Party or is in the possession of or in the control of or obtainable by a person within the jurisdiction of the requested Party;
- g) to the extent known, the name and address of any person believed to be in possession of or in the control of or able to obtain the requested information;
- h) a statement that the request is in conformity with the laws and administrative practices of the requesting Party, that if the requested information was within the jurisdiction of the requesting Party, then the competent authority of the requesting Party would be able to obtain the information under the laws of the requesting Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
- i) a statement that the requesting Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

6. The competent authority of the requested Party shall acknowledge receipt of the request to the competent authority of the requesting Party and shall use its best endeavours to forward the requested information to the requesting Party with the least reasonable delay.

Article 6

Tax Examinations Abroad

1. By reasonable notice given in advance, the requesting Party may request that the requested Party allow representatives of the competent authority of the requesting Party to enter the territory of the requested Party, to the extent permitted under its domestic laws, to interview individuals and examine records with the prior written consent of the individuals or other persons concerned. The competent authority of the requesting Party shall notify the competent authority of the requested Party of the time and place of the intended meeting with the individuals concerned.

2. At the request of the competent authority of the requesting Party, the competent authority of the requested Party may allow representatives of the competent authority of the requesting Party to be present at a tax examination in the territory of the requested Party.

3. If the request referred to in paragraph 2 is granted, the competent authority of the requested Party conducting the examination shall, as soon as possible, notify the competent authority of the requesting Party of the time and place of the examination, the authority or person authorised to carry out the examination and the procedures and conditions required by the requested Party for the conduct of the examination. All decisions regarding the conduct of the examination shall be made by the requested Party conducting the examination.

Article 7

Possibility of Declining a Request

1. The competent authority of the requested Party may decline to assist
 - a) where the request is not made in conformity with this Agreement;
 - b) where the requesting Party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or
 - c) where the disclosure of the information requested would be contrary to the public policy of the requested Party.
2. This Agreement shall not impose upon a Party any obligation to provide items subject to legal privilege as provided for under the domestic law of the relevant Party, or any trade, business, industrial, commercial or professional secret or trade process, provided that information described in Article 5(4) shall not by reason of that fact alone be treated as such a secret or trade process.
3. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.
4. The requested Party shall not be required to obtain and provide information which the requesting Party would be unable to obtain under its own laws for the purpose of the administration or enforcement of its own tax laws or in response to a valid request made in similar circumstances from the requested Party under this Agreement.
5. The requested Party may decline a request for information if the information is requested by the requesting Party to administer or enforce a provision of the tax law of the requesting Party, or any requirement connected therewith, which discriminates against a national or citizen of the requested Party as compared with a national or citizen of the requesting Party in the same circumstances.

Article 8

Confidentiality

1. All information provided and received by the competent authorities of the Parties shall be kept confidential.
2. Information provided may not be used for any purpose other than the purposes stated in Article 1 without the prior express written consent of the requested Party.
3. Information provided shall be disclosed only to persons or authorities (including judicial and administrative authorities) concerned with the purposes specified in Article 1 and used by such persons or authorities only for such purposes including the determination of any appeal. For these purposes, information may be disclosed in public court proceedings or in judicial decisions.
4. The information provided to a requesting Party under this Agreement may not be disclosed to any other jurisdiction.

Article 9

Costs

Unless the competent authorities of the Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested Party, and extraordinary costs in providing assistance (including costs of engaging external advisers in connection with litigation or otherwise) shall be borne by the requesting Party. The respective competent authorities shall consult from time to time with regard to this Article, and in particular the competent authority of the requested Party shall consult with the competent authority of the requesting Party if the costs of providing information with respect to a specific request are expected to be significant.

'Extraordinary costs' do not include ordinary administrative and overhead expenses incurred by the requested Party in reviewing and responding to information requests submitted by the requesting Party.

Article 10

Implementation Legislation

The Parties shall enact any legislation necessary to comply with, and give effect to, the terms of the Agreement.

Article 11

Mutual Agreement Procedure

1. Where difficulties or doubts arise between the Parties regarding the implementation or interpretation of the Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.
2. In addition to the agreements referred to in paragraph 1, the competent authorities of the Parties may mutually agree on the procedures to be used under Articles 5, 6 and 9.
3. The competent authorities of the Parties may communicate with each other directly for purposes of reaching agreement under this Article.
4. The Parties may also agree on other forms of dispute resolution should this become necessary.

Article 12

Entry into Force

1. This Agreement is subject to ratification, acceptance or approval by the Parties, in accordance with their respective laws. Instruments of ratification, acceptance or approval shall be exchanged as soon as possible.

2. This Agreement shall enter into force when each Party has notified the other of the completion of the procedures required by its law for entry into force. Upon the date of entry into force it shall have effect:

- a) for criminal tax matters on that date; and
- b) for all other matters covered in Article 1 on that date, but only in respect of taxable periods beginning on or after that date or, where there is no taxable period, all charges to tax arising on or after that date.

Article 13

Termination

1. Either Party may terminate the Agreement by serving a notice of termination by letter to the competent authority of the other Party.
2. Such termination shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of notice of termination by the other Party.
3. If the Agreement is terminated the Parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

In witness whereof, the undersigned, being duly authorised thereto have signed the Agreement.

Done at London on 5th September 2012 in two originals, each in the English and Italian languages, both texts being equally authentic.

FOR THE STATES OF GUERNSEY

FOR THE GOVERNMENT
OF THE ITALIAN REPUBLIC
